

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLARENCE L. BIRD RATTLER, JR.,

Defendant.

CR 02-55-GF-BMM-JTJ

**FINDINGS AND
RECOMMENDATIONS**

I. Synopsis

Defendant Clarence L. Bird Rattler, Jr. (Bird Rattler) has been accused of violating the conditions of his supervised release. Bird Rattler admitted the alleged violation. Bird Rattler's supervised release should be revoked. Bird Rattler should be placed in custody for 8 months, with 28 months of supervised release to follow.

II. Status

Bird Rattler pleaded guilty to Robbery on July 24, 2002. (Doc. 10). The Court sentenced Bird Rattler to 44 months of custody, followed by 3 years of supervised release. (Doc. 17). Bird Rattler's current term of supervised release began on September 12, 2017. (Doc. 30 at 1).

Petition

The United States Probation Office filed a Petition requesting that the Court

revoke Bird Rattler's supervised release on September 7, 2018. (Doc. 30). The Petition alleges that Bird Rattler violated the conditions of his supervised release by consuming alcohol. (Doc. 30 at 2). United States District Judge Brian Morris issued a warrant for Bird Rattler's arrest on September 17, 2018. (Doc. 31).

Initial appearance

Bird Rattler appeared before the undersigned for his initial appearance on September 25, 2018. Bird Rattler was represented by counsel. Bird Rattler stated that he had read the petition and that he understood the allegations. Bird Rattler waived his right to a preliminary hearing. The parties consented to proceed with the revocation hearing before the undersigned.

Revocation hearing

The Court conducted a joint revocation hearing in this case and in Cause CR 03-76-GF-BMM on October 16, 2018. Bird Rattler admitted that he had violated the conditions of his supervised release by consuming alcohol. The government presented evidence that Bird Rattler was intoxicated on September 1, 2018. The violation is serious and warrants revocation of Bird Rattler's supervised release.

Bird Rattler's violation is a Grade C violation. Bird Rattler's criminal history category is III. Bird Rattler's underlying offense is a Class C felony. Bird Rattler could be incarcerated for up to 36 months. He could be ordered to remain

on supervised release for up to 36 months, less any custody time imposed. The United States Sentencing Guidelines call for a term of custody of 5 to 11 months in this case and in Cause CR 03-76-GF-BMM.

Bird Rattler requested a custodial sentence of 6 to 7 months. Bird Rattler admitted that he needs substance abuse treatment. Bird Rattler requested that he be placed in a Residential Reentry Center while on supervised release. The government requested a sentence within the applicable guideline range.

III. Analysis

Bird Rattler's supervised release should be revoked. Bird Rattler should be incarcerated for 8 months, with 28 months of supervised release to follow. Bird Rattler should spend the first 180 days of supervised release in a Residential Reentry Center, if eligible. The supervised release conditions imposed previously should be continued. This sentence is sufficient but not greater than necessary.

IV. Conclusion

The Court informed Bird Rattler that the above sentence would be recommended to Judge Morris. The Court also informed Bird Rattler of his right to object to these Findings and Recommendations within 14 days of their issuance. The Court explained to Bird Rattler that Judge Morris would consider a timely objection before making a final determination on whether to revoke his supervised

release and what, if any, sanction to impose.

The Court **FINDS:**

Clarence L. Bird Rattler, Jr. violated the conditions of his supervised release by consuming alcohol.

The Court **RECOMMENDS:**

The District Court should revoke Bird Rattler's supervised release and commit Bird Rattler to the custody of the United States Bureau of Prisons for a term of imprisonment of 8 months, with a 28 months of supervised release to follow. Bird Rattler should spend the first 180 days of supervised release in a Residential Reentry Center, if eligible. The sentence imposed in this case should run concurrent with the sentence imposed in Cause CR 03-76-GF-BMM.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge, and may waive the right to appear and allocute before a district judge.

DATED this 18th day of October, 2018.



John Johnston
United States Magistrate Judge